

111TH CONGRESS
1ST SESSION

S. 670

To amend title XIX of the Social Security Act to encourage States to provide pregnant women enrolled in the Medicaid program with access to comprehensive tobacco cessation services.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2009

Mr. HARKIN (for himself, Mr. LAUTENBERG, Mr. LEAHY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to encourage States to provide pregnant women enrolled in the Medicaid program with access to comprehensive tobacco cessation services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Smoke Free Mothers
5 and Babies Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) At least 1 out of every 10 pregnant women
2 in the United States smokes, which accounts for
3 over 400,000 births per year.

4 (2) Tobacco use during pregnancy causes seri-
5 ous harm to the fetus. Fetal mortality rates are 35
6 percent higher among pregnant women who smoke
7 than among nonsmokers and the Surgeon General
8 reports that a pregnant woman who smokes is 1.5
9 to 3.5 times more likely than a nonsmoker to have
10 a low birth weight baby.

11 (3) Studies have found that smoking and expo-
12 sure to secondhand smoke among pregnant women
13 is a major cause of miscarriage, stillbirths, and sud-
14 den infant death syndrome (SIDS).

15 (4) A single percentage point decline in smok-
16 ing prevalence among pregnant women would pre-
17 vent 1,300 cases of low birth weight among babies
18 annually and save at least \$21,000,000 in direct
19 medical costs.

20 (5) For every \$1 spent on smoking cessation
21 for pregnant women, an estimated \$3 in neonatal in-
22 tensive care costs could be avoided.

23 (6) Such costs have a disproportionate impact
24 on Medicaid, with estimates indicating that pregnant
25 women on Medicaid are more likely to smoke than

pregnant women not on Medicaid. Smoking-attributable neonatal health care costs for Medicaid total almost \$228,000,000, more than \$700 per pregnant smoker.

(7) In fiscal year 2008, States collected a record \$24,400,000,000 from settlement agreements with the tobacco industry and tobacco taxes (an increase from \$22,300,000,000 in fiscal year 2007). In fiscal year 2008, States spent just 2.9 percent of their tobacco-related revenue on tobacco prevention and cessation.

(8) Evidence shows that the cuts States have made in tobacco prevention funding since 2002 have slowed or possibly stalled recent declines in youth smoking, putting further progress at risk.

**SEC. 3. PROMOTING CESSATION OF TOBACCO USE BY
PREGNANT WOMEN UNDER THE MEDICAID
PROGRAM.**

(a) REQUIRING COVERAGE OF COUNSELING AND PHARMACOTHERAPY FOR CESSATION OF TOBACCO USE BY PREGNANT WOMEN.—Section 1905 of the Social Security Act (42 U.S.C. 1396d(a)(4)) is amended—

(1) in subsection (a)(4)—

(A) by striking “and” before “(C)”; and

1 (B) by inserting before the semicolon at
 2 the end the following new subparagraph: “; and
 3 (D) counseling and pharmacotherapy for ces-
 4 sation of tobacco use by pregnant women (as
 5 defined in subsection (y))”; and

6 (2) by adding at the end the following:

7 “(y)(1) For purposes of this title, the term ‘coun-
 8 seling and pharmacotherapy for cessation of tobacco use
 9 by pregnant women’ means diagnostic, therapy, and coun-
 10 seling services and pharmacotherapy (including the cov-
 11 erage of prescription and nonprescription tobacco ces-
 12 sation agents approved by the Food and Drug Administra-
 13 tion) for cessation of tobacco use by pregnant women who
 14 use tobacco products or who are being treated for tobacco
 15 use that is furnished—

16 “(A) by or under the supervision of a physician;
 17 or

18 “(B) by any other health care professional
 19 who—

20 “(i) is legally authorized to furnish such
 21 services under State law (or the State regu-
 22 latory mechanism provided by State law) of the
 23 State in which the services are furnished; and

1 “(ii) is authorized to receive payment for
 2 other services under this title or is designated
 3 by the Secretary for this purpose.

4 “(2) Subject to paragraph (3), such term is limited
 5 to—

6 “(A) services recommended with respect to
 7 pregnant women in ‘Treating Tobacco Use and De-
 8 pendence: A Clinical Practice Guideline’, published
 9 by the Public Health Service in June 2000, or any
 10 subsequent modification of such Guideline; and

11 “(B) such other services that the Secretary rec-
 12 ognizes to be effective for cessation of tobacco use
 13 by pregnant women.

14 “(3) Such term shall not include coverage for drugs
 15 or biologicals that are not otherwise covered under this
 16 title.”.

17 (b) EXCEPTION FROM OPTIONAL RESTRICTION
 18 UNDER MEDICAID PRESCRIPTION DRUG COVERAGE.—
 19 Section 1927(d)(2) of the Social Security Act (42 U.S.C.
 20 1396r–8(d)(2)) is amended—

21 (1) in subparagraph (E), by inserting before the
 22 period at the end the following: “, except in the case
 23 of pregnant women when recommended in accord-
 24 ance with the Guideline referred to in section
 25 1905(y)(2)(A)”; and

1 (2) in subparagraph (G), by inserting before the
 2 period at the end the following: “, except, in the case
 3 of pregnant women when recommended in accord-
 4 ance with the Guideline referred to in section
 5 1905(y)(2)(A), agents approved by the Food and
 6 Drug Administration for purposes of promoting, and
 7 when used to promote, tobacco cessation”.

8 (c) REMOVAL OF COST-SHARING FOR COUNSELING
 9 AND PHARMACOTHERAPY FOR CESSATION OF TOBACCO
 10 USE BY PREGNANT WOMEN.—

11 (1) GENERAL COST-SHARING LIMITATIONS.—
 12 Section 1916 of the Social Security Act (42 U.S.C.
 13 1396o) is amended in each of subsections (a)(2)(B)
 14 and (b)(2)(B) by inserting “, and counseling and
 15 pharmacotherapy for cessation of tobacco use by
 16 pregnant women (as defined in section 1905(y)) and
 17 covered outpatient drugs (as defined in subsection
 18 (k)(2) of section 1927 and including nonprescription
 19 drugs described in subsection (d)(2) of such section)
 20 that are prescribed for purposes of promoting, and
 21 when used to promote, tobacco cessation by preg-
 22 nant women in accordance with the Guideline re-
 23 ferred to in section 1905(y)(2)(A)” after “com-
 24 plicate the pregnancy”.

1 (2) APPLICATION TO ALTERNATIVE COST-SHAR-
 2 ING.—Section 1916A(b)(3)(B)(iii) of such Act (42
 3 U.S.C. 1396o–1(b)(3)(B)(iii)) is amended by insert-
 4 ing “, and counseling and pharmacotherapy for ces-
 5 sation of tobacco use by pregnant women (as defined
 6 in section 1905(y))” after “complicate the preg-
 7 nancy”.

8 (d) INCREASED FMAP FOR TOBACCO CESSATION
 9 COUNSELING SERVICES AND MEDICATIONS.—The first
 10 sentence of section 1905(b) of the Social Security Act (42
 11 U.S.C. 1396d(b)) is amended by inserting the following
 12 before the period: “, and medical assistance provided for
 13 counseling and pharmacotherapy for cessation of tobacco
 14 use by pregnant women (as defined in subsection (y)) and
 15 for covered outpatient drugs (as defined in subsection
 16 (k)(2) of section 1927 and including nonprescription
 17 drugs described in subsection (d)(2) of such section) that
 18 are prescribed for purposes of promoting, and when used
 19 to promote, tobacco cessation by pregnant women in ac-
 20 cordance with the Guideline referred to in subsection
 21 (y)(2)(A)”.

22 (e) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as provided in para-
 24 graph (2), the amendments made by this section
 25 shall apply to services furnished on or after the first

1 fiscal year quarter that begins after the date of en-
2 actment of this Act.

3 (2) EXTENSION OF EFFECTIVE DATE FOR
4 STATE LAW AMENDMENT.—In the case of a State
5 plan under title XIX of the Social Security Act (42
6 U.S.C. 1396 et seq.) which the Secretary of Health
7 and Human Services determines requires State legis-
8 lation in order for the plan to meet the additional
9 requirement imposed by the amendment made by
10 subsection (a), the State plan shall not be regarded
11 as failing to comply with the requirements of such
12 title solely on the basis of its failure to meet these
13 additional requirements before the first day of the
14 first calendar quarter beginning after the close of
15 the first regular session of the State legislature that
16 begins after the date of enactment of this Act. For
17 purposes of the previous sentence, in the case of a
18 State that has a 2-year legislative session, each year
19 of the session is considered to be a separate regular
20 session of the State legislature.

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